



**CITY OF SUNNYVALE  
REPORT  
Administrative Hearing**

**August 27, 2008**

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**SUBJECT:**           **2008-0783 - Ed Bozorghadad** [Applicant] **Ali and Parisa Bozorghadad Trustee** [Owner] Application for property located at **1005 West El Camino Real** (at S. Mary Ave.) in a C-2/ECR (Highway Business/ Precise Plan for El Camino Real) Zoning District. (APN: 161-41-010) MH

Motion                   Use Permit to allow the sale of beer and wine at an existing gas station and convenience store.

**REPORT IN BRIEF**

**Existing Site Conditions**           Automobile service station with convenience store

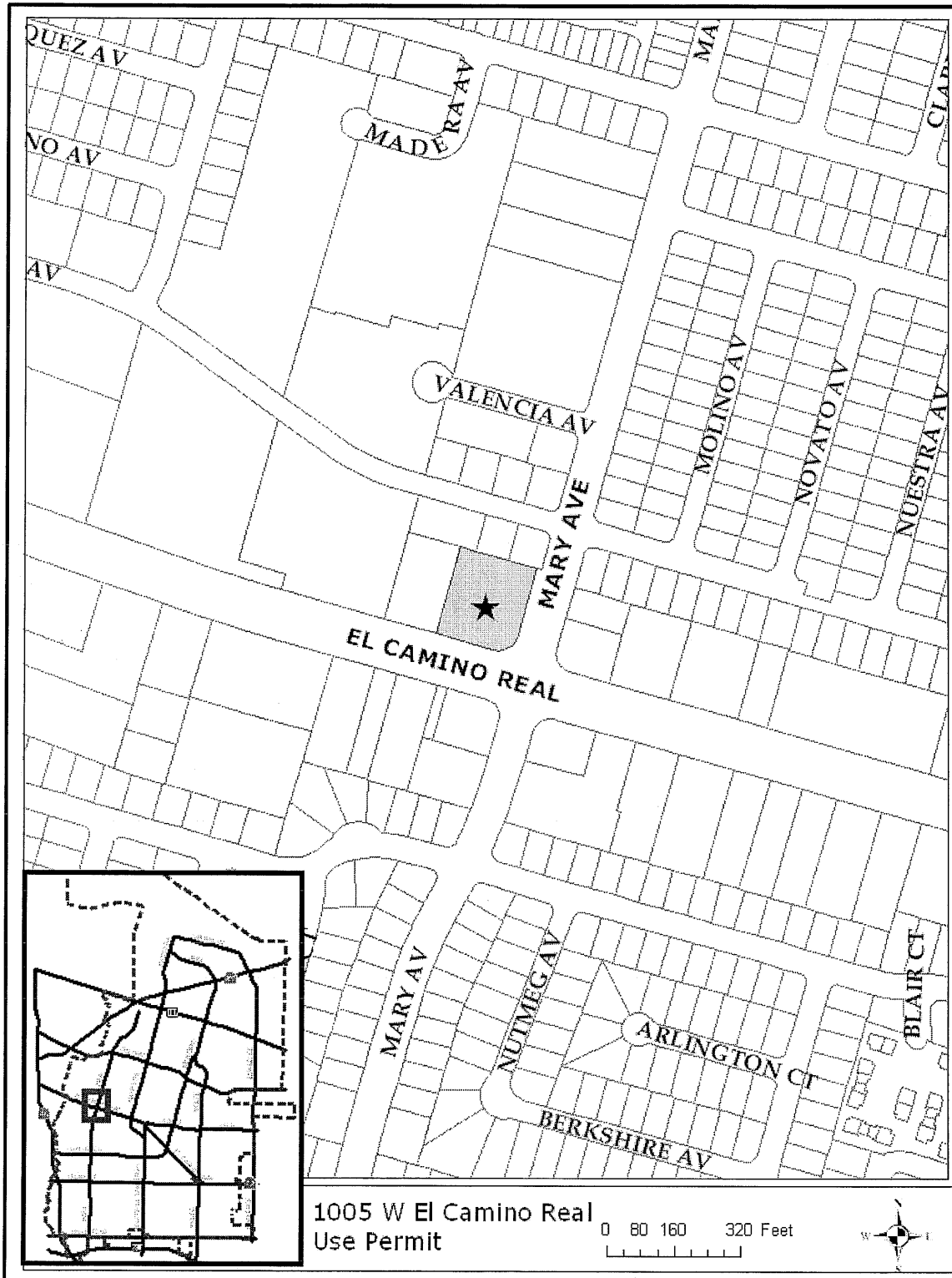
**Surrounding Land Uses**

North	Multi-family residential
South	Commercial
East	Commercial
West	Commercial

**Issues**                   Off-site sales of beer and wine

**Environmental Status**           A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

**Staff Recommendation**           Approve with conditions



**PROJECT DATA TABLE**

	<b>EXISTING</b>	<b>PROPOSED</b>	<b>REQUIRED/ PERMITTED</b>
<b>General Plan</b>	Commercial General Business	Same	Commercial General Business
<b>Zoning District</b>	C-2/ECR	Same	C-2/ECR
<b>Lot Size (s.f.)</b>	38,332	Same	No min.
<b>Gross Floor Area (s.f.)</b>	Fuel canopy: 3,002 Convenience store: 1,668 Car wash: 1,308	Same	No max.
<b>Lot Coverage (%)</b>	15.6%	Same	35% max.



Starred items indicate deviations from Sunnyvale Municipal Code requirements.

**ANALYSIS****Description of Proposed Project**

The applicant proposes to offer the off-site sale of beer and wine at an automobile service station's existing convenience store. Beer and wine sales will occur from existing coolers and shelves within the store. No physical changes are proposed to the interior or exterior of the structure.

**Background**

**Previous Actions on the Site:** The following table summarizes previous planning applications related to the subject site.

<b>File Number</b>	<b>Brief Description</b>	<b>Hearing/Decision</b>	<b>Date</b>
2007-1320	Miscellaneous Plan Permit to allow grocery sales at a service station convenience store	Staff Review / Approved	04/28/2008
2007-0699	Miscellaneous Plan Permit to allow the addition of a canopy over the car wash entrance	Staff Review / Pending	N/A

File Number	Brief Description	Hearing/Decision	Date
2003-0849	Use Permit to allow construction of a fuel service canopy, convenience store, and self-service car wash	Planning Commission / Approved	04/12/2004

**Environmental Review**

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 1 Categorical Exemptions include minor modifications at existing facilities.

**Use Permit**

**Site Layout:** The subject site is located on the corner of El Camino Real and Mary Avenue and has driveways taking access off both streets. There is a single fuel canopy near the front of the property having six fuel pumps. A 1,668 square foot convenience store/gift shop is located near the rear of the property, with a self-service car wash tunnel located behind the building. Parking is located in front of the convenience store building and along the site's Mary Avenue frontage. Adjacent uses along El Camino Real are commercial. There are adjacent multi-family residential buildings on the neighboring properties to the north (behind the car wash tunnel).

**Compliance with Development Standards/Guidelines:** The proposed project complies with all applicable development standards and guidelines. Off-site sales of beer and wine may be allowed at an automobile service station with approval of a Use Permit provided three findings can be made:

- 1) The service station may not be located within 500 feet of another use with off-site alcohol sales;
- 2) The service station may not result in a concentration of more than four businesses with off-site sales of alcohol within a 1000-foot radius; and
- 3) The service station may not be located within 500 feet of a public park or public school.

If any of the above three findings are not met, the permit can only be granted if three additional findings are also met:

- a) The project will not adversely affect persons residing or working in surrounding areas;
- b) The project will not adversely affect surrounding property values; and
- c) The project will not be detrimental to public health, safety, and welfare.

The proposed project is not located within 500 feet of any of the uses listed in item 3 above, and will not result in more than four businesses with off-site sales within a 1000-foot radius. However, there is one existing business within 500 feet offering off-site sales of alcohol. As a result, the three additional findings (a-c) must be made. Staff believes these findings can be made for the proposed project. The City's Department of Public Safety has inspected the subject site including existing security measures and does not believe the addition of alcohol sales will be detrimental to surrounding persons or properties, nor will it be detrimental to the public health, safety, or welfare. To ensure negative impacts do not result, SMC section 19.98.020 requires that off-site sales of beer and wine at an automobile service station must comply with the following requirements: no beer or wine shall be displayed within 5 feet of the cash register or front door unless inside a permanently-affixed cooler; no advertisements for beer or wine shall be displayed at motor fuel islands; and employees on duty between the hours of 10:00 p.m. and 2:00 a.m. who sell beer or wine shall be at least 21 years old. Staff has added these items as Condition of Approval #3 (Attachment B).

**Expected Impact on the Surroundings:** The proposed use is not expected to have a negative impact on surrounding residents, properties, or uses. The proposed sales would occur along with grocery sales in the existing convenience store. Adequate site security is in place to discourage loitering, theft, on-site consumption of alcoholic beverages, and other unpermitted activities.

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### **Fiscal Impact**

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No fiscal impacts other than normal fees and taxes are expected.

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### **Public Contact**

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<b>Notice of Public Hearing</b>	<b>Staff Report</b>	<b>Agenda</b>
<ul style="list-style-type: none"><li>• Published in the <i>Sun</i> newspaper</li><li>• Posted on the site</li><li>• 15 notices mailed to property owners and residents adjacent to the project site</li></ul>	<ul style="list-style-type: none"><li>• Posted on the City of Sunnyvale's Web site</li><li>• Provided at the Reference Section of the City of Sunnyvale's Public Library</li></ul>	<ul style="list-style-type: none"><li>• Posted on the City's official notice bulletin board</li><li>• Posted on the City of Sunnyvale's Web site</li></ul>

Staff has not received any public contact related to the subject application.

## **Conclusion**

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**Findings and General Plan Goals:** Staff was able to make the required Findings based on the justifications for the Use Permit. Recommended findings and General Plan Goals are located in Attachment A.

**Conditions of Approval:** Recommended Conditions of Approval are located in Attachment B.

## **Alternatives**

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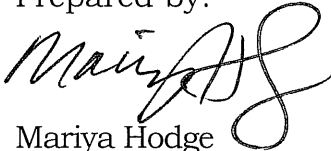
1. Approve the Use Permit with the conditions listed in Attachment B.
2. Approve the Use Permit with modified conditions.
3. Deny the Use Permit.

## **Recommendation**

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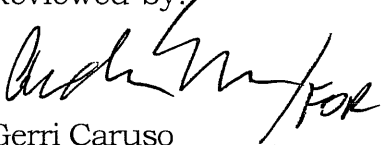
### Alternative 1

Prepared by:



Mariya Hodge  
Project Planner

Reviewed by:



Gerri Caruso  
Principal Planner

## **Attachments:**

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Floor Plans
- D. Description and Justifications Provided by the Applicant

## **Recommended Findings - Use Permit**

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Goals and Policies that relate to this project are:

### **Land Use and Transportation Element – Policy C4.1**

*Maintain a diversity of commercial enterprises and industrial uses to sustain and bolster the local economy.*

### **Land Use and Transportation Element – Action Statement C4.1.3**

*Promote commercial uses that respond to the current and future retail service needs of the community.*

### **Land Use and Transportation Element – Action Statement N1.13.2**

*Support convenient neighborhood commercial services that reduce automobile dependency and contribute positively to neighborhood character.*

### **Law Enforcement Sub-Element – Goal 4.1A**

*Provide a safe and secure environment for people and property in the community.*

## **Required findings for Use Permits:**

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale. *[Finding made]*

The proposed addition of beer and wine sales would provide additional retail services for neighborhood residents, and is not anticipated to have a negative impact on surrounding properties or uses.

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties. *[Finding made]*

The proposed beer and wine sales would occur along with the currently permitted sale of other grocery items at the convenience store. As conditioned, measures would be taken to protect against sale of beer and wine to, or theft of beer and wine by, persons under the age of 21. There is only one other site within a 1000-foot radius offering the off-site sale of beer and wine, therefore the proposed sales are not expected to result in an over-concentration of alcohol sales in the area. The site has existing security measures including lighting, clear visibility into and out of the store, and security cameras to discourage loitering, on-site consumption of alcoholic beverages, and other

unpermitted activities. As a result, the proposed use would not result in negative impacts on surrounding properties or uses.

**Additional required findings for the sale of beer and wine at automobile service stations:**

1. The proposed site must be at least 500 feet from a use with off-site sales of alcohol, unless additional findings can be made that the proposed new sales :
  - a. will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding areas; and
  - b. will not impair the value of property of other persons located in the vicinity of the area; and
  - c. will not be detrimental to the public health, safety or welfare.  
*[Findings made]*

There is an existing business within 500 feet of the subject site which offers off-site sales of alcohol, requiring the findings above (a-c) to be made. These findings can be made. The proposed off-site sale of beer and wine would occur along with the currently permitted sale of other grocery items at the convenience store. As conditioned, measures would be taken to protect against sale of beer and wine to, or theft of beer and wine by, persons under the age of 21. There is only one other site within a 500-foot radius offering the off-site sale of beer and wine, therefore the proposed sales are not expected to result in an over-concentration of alcohol sales in the area. The site has existing security measures including lighting, clear visibility into and out of the store, and security cameras to discourage loitering, on-site consumption of alcoholic beverages, and other unpermitted activities. As a result, the proposed use would not negative impact surrounding residents, would not impair surrounding property values, and would not be detrimental to the public health, safety, or welfare.

2. The proposed site will not exceed a concentration of more than four businesses with off-site sales of alcohol within a 1000-foot radius, unless the findings above (1.a - 1.c) can be made. *[Finding made]*

The proposal will result in a total of two sites licensed for off-site alcohol sales within a 1000-foot radius.

3. The proposed site shall not be located closer than 500 feet from any public park or public school unless the above findings (1.a - 1.c) can be made. *[Finding made]*

The subject site is not located within 500 feet of a park or school.



### **Recommended Conditions of Approval - Use Permit**

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In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

#### **1. GENERAL CONDITIONS**

- A. Execute a Use Permit document within 60 days of the approval of the permit by the final review authority.
- B. The project shall be in conformance with the plans and use approved at the public hearing(s). Any expansion or modification of the approved use shall be approved by separate application at a public hearing, except that minor changes may be approved by the Director of Community Development.
- C. The Use Permit for the use shall expire if the use is discontinued for a period of one year or more.
- D. The Use Permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.

#### **2. COMPLY WITH OR OBTAIN OTHER PERMITS**

- A. Obtain Building permits if required for any proposed equipment installation or other building modifications.
- B. Obtain all appropriate permits and/or licenses from the Department of Alcoholic Beverage Control (ABC).
- C. Comply with all requirements of the previously approved Miscellaneous Plan Permit (#2007-1320) related to grocery sales at the convenience store.

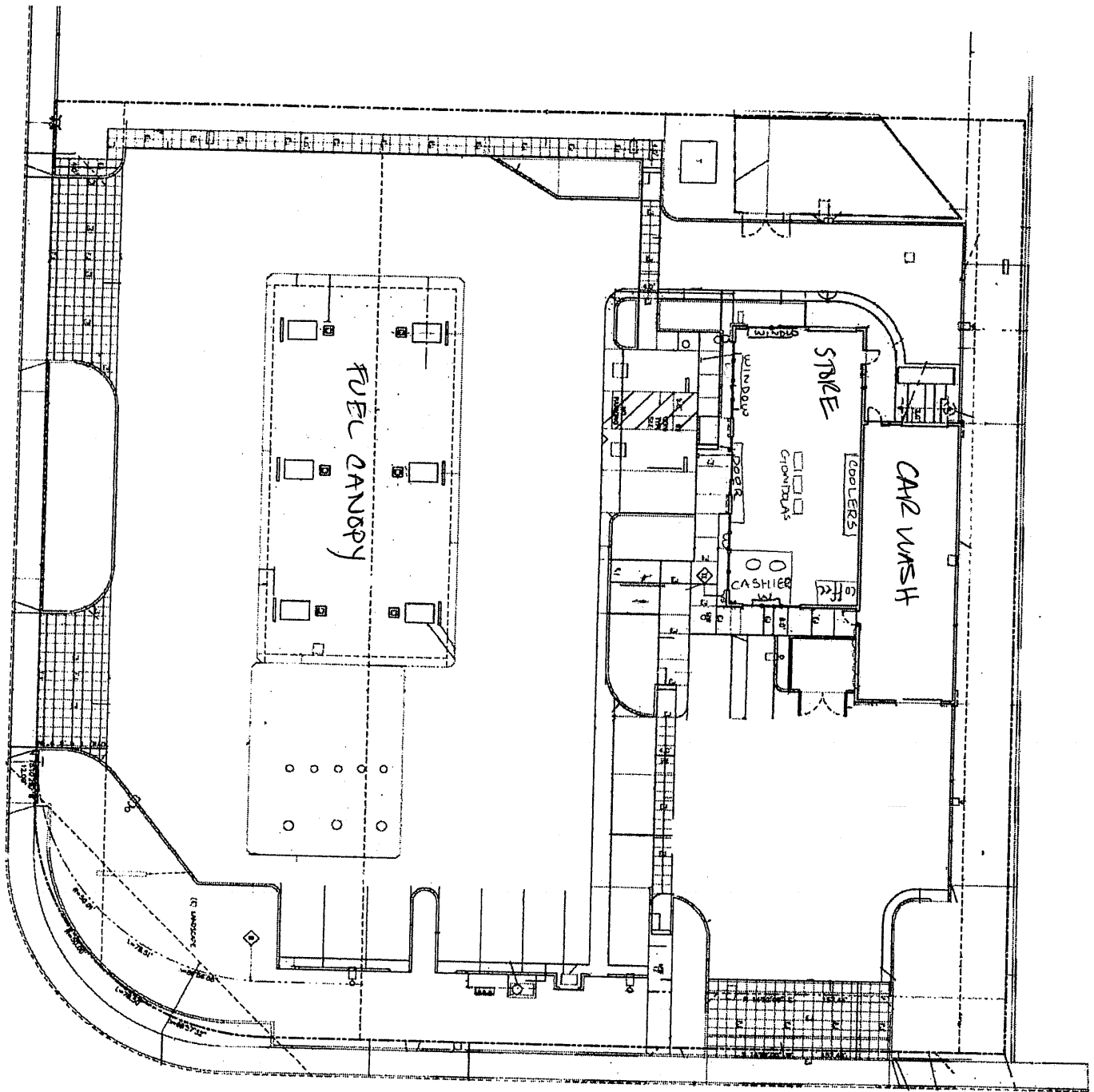
#### **3. OFF-SITE SALE OF BEER & WINE**

- A. No beer or wine shall be displayed within 5 feet of the cash register or front door unless it is inside a permanently-affixed cooler.
- B. No advertisement of alcoholic beverages shall be displayed at motor fuel islands.
- C. Employees on duty between the hours of 10:00 p.m. and 2:00 a.m. who sell beer or wine shall be at least 21 years old.

## **Attachment C**

### **Site and Floor Plans**

EL CAMINO REAL



MARY AVENUE

## **Attachment D**

### **Description and Justifications Provided by the Applicant**



# USE PERMIT/SPECIAL DEVELOPMENT JUSTIFICATIONS

ATTACHMENT D

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One of the two following findings must be made in order to approve a Use Permit or Special Development Permit application.

The Sunnyvale Municipal code states that at least one of the following two justifications must be met before granting the Use Permit or Special Development Permit. Please provide us information on how your project meets at least one of the following criteria.

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the project ...

OR

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties as ...

The applicant/owner operates a gasoline station with a convenience store (Sunnyvale Chevron) and would like to add beer and wine to the shop's line of products sold. There will be no changes to the structure of the store to achieve this product addition. There will be no new construction involved. The general appearance will remain the same. The applicant is an existing responsible licensee who responds to the needs of the community in a positive way. There will be no other changes to the business. Beer & wine will just be added to the variety of products sold.

If you need assistance in answering either of these justifications, contact the Planning Division staff at the One-Stop Permit Center.

City of Sunnyvale  
Planning Department  
Attn: Andrew Miner  
1000 Civic Center Drive  
Sunnyvale, CA 95087

Re: Public Convenience or Necessity  
Hadad Enterprises, Inc.  
Dba: Sunnyvale Chevron  
1005 W. El Camino Real  
Sunnyvale, Ca 95087

Dear Mr. Miner,

My name is Ali Borzohadad, and I am the President / Owner of Hadad Enterprises, Inc., which operates the Sunnyvale Chevron station located at 1005 W. El Camino Real in Sunnyvale. We have recently filed an application with the Department of Alcoholic Beverage Control (ABC) for a Type 20, Off-Sale Beer and Wine license at this premises.

While filing the ABC license application, I was notified through my representative that because of an undue concentration of licenses in the census tract, I need to have the City of Sunnyvale governing body establish that the Public Convenience or Necessity would be served by the issuance of a Type 20, Off-Sale Beer & Wine license, at my premises. Separately, I have been advised that you are the individual to submit this letter too. If that is incorrect, please forward this letter to the appropriate individual, or notify me and I'll resubmit it if that is deemed to be necessary.

Therefore, in this letter I intend to establish that the Public Convenience or Necessity would be served by the issuance of the above mentioned Type 20 license at my premises, and request that you make such a finding for the ABC application I've filed.

I have operated the above mentioned premises since about 2007, when I purchased the premises and property. As you likely know, the business is located on the Northwest corner of West El Camino Real and Mary Avenue, in an area of Sunnyvale that is comprised of commercial businesses along El Camino Real, with residential uses behind the businesses both North and South of the commercial uses. There are residents located within 100 feet of my premises.

The business has a full convenience store, auto car wash and gasoline islands to serve our customers. The store sells products such as milk, dairy products, juices, water and soft drinks, fruits, sandwiches, hot dogs, household sundries, health and beauty items, over the counter medicine, candy and snacks, cigarettes and automotive lubricants.

This area along West El Camino Real is entirely commercial businesses. However, this premises is the only "convenience store" located on the North side of West El Camino Real in this area. The only other "off-sale" licensed business is located South of West El Camino Real on South Mary Street. At present, customers who want a location where they can quickly shop for their household basics need to walk or drive to locations on the South side of West El Camino Real.

Hadad Enterprises, Inc. (PCorN)

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They other option would be to stand in line at one of the large department or variety type stores down the street.

Since I purchased this business, I have had many requests by customers to add beer and wine because they have want a convenient location in which to do so, and don't want to wait in long lines elsewhere.

Ever since this business opened, it has provided the residents of Sunnyvale a valuable service to the community, and has been a good neighbor to this community. I am proud of my record at this location, as well as my other business locations around the Bay Area, and that commitment to the local community I serve will continue even with the addition of a off-sale beer and wine license at this location.

Additionally, I am currently a Type 20, Off-Sale Beer and Wine licensee in good standing with the Department of Alcoholic Beverage Control (DABC). I am acutely aware of my responsibilities to continue to provide a positive service to the community. As such, when approved, I will have my store staff attend the ABC's L.E.A.D. (Licensee Education on Alcohol and Drugs) Training program. This nationally recognized training program provides applicants, licensees and the employee's valuable information to prevent potential violations of law relating to the sale of alcoholic beverages at their premises.

As mentioned above, this business is the only convenience type store in this area of West El Camino Real. Residents who shop or dine in this immediate area currently have only couple other locations in which to purchase beer and wine, and both are either on the South side of West El Camino Real or are large stores where long lines are not uncommon. Having this location be able to sell beer and wine would provide the residents of the surrounding areas, a convenience not presently available in this area of Sunnyvale.

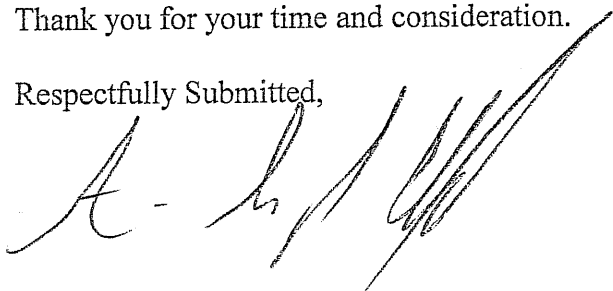
The desired addition of an Off-Sale Beer and Wine license would provide adult patrons an opportunity to purchase beer and wine only in a convenient location if they so desire.

I believe the above information establishes the uniqueness of my snack shop, and therefore request that a Public Convenience or Necessity finding be made and communicated to the Department of Alcoholic Beverage Control, San Jose District Office, and a copy to me.

If further information is needed, please let my representative Robert Sylvia know. Robert can be reached at (510) 386-0000 or by mail at 3984 Washington Blvd., #126, Fremont, CA 94538.

Thank you for your time and consideration.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to be 'A. H. [unclear]', written over a horizontal line.

Ali Borzohadad



Subject: Use Permit – 1005 W. El Camino Real, Sunnyvale, CA  
File No.: 2008-0783

Applicant response to Planning Department letter dated 8/6/08.

**Sunnyvale Chevron**

**Does Not Adversely Affect the Citizenry.**

Sunnyvale Chevron is located in a C2, ECR (Highway Business, El Camino Real) Zoning District. This state of the art convenience store represents the only convenient business location on the North side of El Camino Real for the neighborhood patrons it serves. Other businesses on the North side that sell the same type products/commodities are large stores, that while they provide a exceptionally wide variety of products, do not provide the convenience level offered by the applicant's premises. Other smaller stores on the North side of El Camino Real are located some distance away and not in locations that are as convenient to residents in the surrounding community.

Sunnyvale Chevron has put forth a very exciting plan for this state of the art convenience store business that will respond to repeated requests from their loyal patrons. Their commitment to community service and having a record of being a good neighbor in this community will not change, and will continue to look for ways to better serve their patrons. The addition of beer and wine sales will not adversely affect the community, but will help better serve the neighborhood, particularly those individuals on the South side of El Camino Real with better product offerings and service to the community.

The operation of this business has proven to be very successful and subsequently provides a life line of transportation needs and convenience to the surrounding neighborhoods where it is located. Additionally, the City of Sunnyvale has benefited greatly by the successful operation of this service station through community satisfaction and a strong revenue base is generated for the City of Sunnyvale from the corresponding sales.

The cooperation of its business owner in this process is what makes the City of Sunnyvale a vibrant and exciting place to live and do business. The owner has long recognized this form of cooperation and has strived to be part of the process. The addition of these new products/commodities will provide an overall convenience to the public, not a detriment.

**Does Not Impair the Value to the Public.**

Sunnyvale Chevron has been a family run business since being remodeled into a state of the art convenience store and the present owner took over in 2007. It is located at the Northwest corner of El Camino Real and Mary Avenue, and part of an intersection that adds to the economic boom being experienced in this area and the neighborhood. The applicant's business has provided a valuable service to the neighborhood patrons at this intersection and provides has been an excellent commercial ambassador to the community. There is no loss of value to the community, only an increase along the lines of improvement, adding product selections, greater convenience for patrons and vitality represented by a business responding to the community requests.

**Will Not Be A Detrimental To Community.**

There is not one shred of evidence that indicates that approval of this CUP for the addition of beer and wine sales for consumption off the premises would result in anything other than an excellent addition to the community, and ultimately providing a valuable service to the community in a manner that will serve the Public Convenience or necessity in this area.

As noted above, the operation of this business has proven to be very successful and subsequently provides a life line of transportation needs and convenience to the surrounding neighborhoods where it is located. Additionally, the City of Sunnyvale has benefited greatly by the successful operation of this service station through community satisfaction and a strong revenue base is generated for the City of Sunnyvale from the corresponding sales.

The products and services this state of the art convenience store offers to the surrounding community are very beneficial, and that will not change regardless of the outcome of this process. The addition of off-sale beer and wine sales at this business will not be detrimental to the community.